



U.S. Citizenship
and Immigration
Services

BA

FILE: WAC 96 035-51233 Office: CALIFORNIA SERVICE CENTER

Date:

SEP 23 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

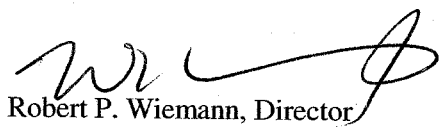
ON BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The director approved the preference visa petition. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intention to revoke the approval of the preference visa petition, and her reasons for doing so. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal, and the matter is again before the AAO on a motion to reopen. The motion will be dismissed as untimely filed.

The petitioner is a California corporation that claims to import and sell machinery and tools. It seeks to employ the beneficiary as its president/general manager and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

Based on an investigation by the Los Angeles district office in conjunction with the Officer-in-Charge at the U.S. Embassy in Hong Kong, the director issued a Notice of Intent to Revoke on July 3, 2001. According to the Notice, the district director requested an investigation into the claimed parent/subsidiary relationship between the foreign entity and the petitioner in order to verify the authenticity of the documents that had been submitted. The director noted that the petitioner claimed to be a subsidiary of the foreign parent company, Guangdong Machinery & Equipment Import and Export Group Corporation (Guangdong Machinery), of the People's Republic of China (China).

According to the director, the investigation revealed that the foreign parent company decided to close the petitioner's operations in 1997 because the petitioner was operating at a loss. The director also stated that the foreign parent company claimed that it had lost contact with the beneficiary since 1997, and that it was unaware of the beneficiary's application to adjust his status. Based upon these allegations, the director provided the petitioner a period of 30 days to offer any evidence in rebuttal. After the petitioner failed to respond to the Notice of Intent to Revoke, the director revoked the approval of the petition on September 17, 2001.

On appeal, counsel stated that the director did not properly revoke the approval of the petition because the director mailed the Notice of Intent to Revoke to the wrong address, despite the petitioner's notification to Citizenship and Immigration Services (CIS) of its change of address. Counsel contended that the revocation of the petition's approval was erroneous because, on appeal, the petitioner submitted sufficient evidence to rebut the director's allegations.

In its appellate decision, the AAO stated that the petitioner failed to present any documentary evidence that it advised CIS, in writing, of a change in address prior to the issuance of the director's Notice of Intent to Revoke. The AAO, therefore, dismissed the appeal.

On motion, counsel states that the AAO was unaware of crucial facts that may have changed the outcome of its decision. Counsel presents evidence in support of her assertions that the petitioner was not properly served

with the Notice of Intent to Revoke. In addition, counsel submits evidence relating to the director's reasons for revoking the petition's approval.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before CIS. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner and counsel at their addresses of record on May 20, 2003. CIS received the petitioner's motion 47 days later on July 6, 2003. Neither counsel nor the petitioner presents any evidence for the AAO to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed. The previous decision of the AAO, dated May 20, 2003, is affirmed. The approval of the petition is revoked.